Supreme Court, U.S.
FILED
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No. 95-2052

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM, 1995

UNITED STATES OF AMERICA,

Petitioner

v.

J.R. KOOG, Sheriff, Val Verde County, Texas,
and
BILL MCGEE, Sheriff, Forrest County, Mississippi,

Respondents

ON PETITION FOR A WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

BRIEF FOR THE RESPONDENTS

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QUESTIONS PRESENTED

1. Whether Congress has power under the U.S. Constitution, Article I, §8 and the Tenth Amendment, as interpreted in *New York v. United States*, 505 U.S. 144 (1992), to command chief law enforcement officers (CLEOs) of the States: to search records and to ascertain whether persons may lawfully purchase handguns; to destroy records concerning purchasers; and to explain adverse legal determinations, as mandated by the Brady Act, 18 U.S.C. §922(s)(2), (6)(B) and (C).

2. Whether the above unconstitutional duties are severable from §922(s)(1). More particularly, whether, given Congress' purpose of preventing the registration of firearm owners, the duty of a firearms dealer to provide notice to the CLEO of a proposed handgun transfer is severable from the duty of the CLEO to destroy such records; whether the CLEO's duty to search records and ascertain the legality of a transfer is severable from the duty of the dealer to allow 5 days to elapse after such notice before making the transfer; and whether, given Congress' due process concerns, the CLEO's duty to explain his finding that a transfer is prohibited is severable from the CLEO's power to prohibit a transfer.

PARTIES TO PROCEEDING

The parties to the proceeding in the Court of Appeals were Sheriff J.R. Koog, Sheriff Bill McGee, and the United States. There are no parent companies and nonwholly owned subsidiaries to be listed.

TABLE OF CONTENTS

Page

QUESTIONS PRESENTED i

PARTIES TO PROCEEDING ii

ARGUMENT 1

THE WRIT SHOULD BE GRANTED AND THIS CASE SHOULD BE CONSOLIDATED WITH *PRINTZ v. UNITED STATES, CERT. GRANTED, NO.* 95-1478 (JUNE 17, 1996) AND *MACK v. UNITED STATES. CERT. GRANTED, NO.* 95-1503 (JUNE 17, 1996) (CONSOLIDATED)

CONCLUSION 2

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BRIEF FOR THE RESPONDENTS

ARGUMENT

THE WRIT SHOULD BE GRANTED AND THIS CASE SHOULD BE CONSOLIDATED WITH *PRINTZ v. UNITED STATES, CERT. GRANTED, NO.* 95-1478 (JUNE 17, 1996) AND *MACK v. UNITED STATES. CERT. GRANTED, NO.* 95-1503 (JUNE 17, 1996) (CONSOLIDATED)

This Court has already granted a Writ of Certiorari to determine whether the Brady Act's commands to law enforcement are constitutional. *Printz v. United States, cert. granted*, No. 95-1478 (June 17, 1996) and *Mack v. United States, cert. granted*, No. 95-1503 (June 17, 1996) (consolidated). The decision being reviewed in those cases, *Mack v. United States*, 66 F.3d 1025 (1995), did not reach the issue of severability since it upheld the validity of the commands to law enforcement. This Court may or may not

consider the severability issue in the *Printz/Mack* cases. If this Court holds that the commands to CLEOs are unconstitutional but does not reach the severability issue, then that issue could only be resolved on remand with unnecessary delay and litigation.

Respondents concur with the position of the United States that this Court should grant a writ of certiorari here. However, Respondents disagree with the position of the United States that the petition in this case should be held pending the decision in *Printz/Mack*. Instead, the better course would be to consolidate this case with *Printz/Mack*.

On or about June 25, 1996, respondents here filed a conditional cross-petition for a writ of certiorari to the U.S. Court of Appeals for the Fifth Circuit on the severability issue and sought consolidation with the *Printz/Mack* cases. *J.R. Koog, Sheriff, and Bill McGee, Sheriff, Cross-Petitioners v. United States, Cross-Respondent.* The arguments of Sheriff Koog and Sheriff McGee concerning why this Court should hear the severability issue are set forth in detail in the cross-petition.

CONCLUSION

This Court should grant a writ of certiorari to review the judgment of the United States Court of Appeals for the Fifth Circuit. Furthermore, this case should be consolidated with *Printz v. United States*, *cert. granted*, No. 95-1478 (June 17, 1996) and *Mack v. United States*, *cert. granted*, No. 95-1503 (June 17, 1996).

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